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**DEPARTMENT OF COMMERCE**

**Bureau of Industry and Security**

**15 CFR Part 774**

**[Docket No. 141204999-5186-01]**

**RIN 0694-AG41**

**Revisions to the Export Administration Regulations Based on the 2014 Missile Technology Control Regime Plenary Agreements**

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to reflect changes to the Missile Technology Control Regime (MTCR) Annex that were agreed to by MTCR member countries at the September and October 2014 Plenary in Oslo, Norway, and pursuant to the 2014 Technical Experts Meeting in Prague, Czech Republic. This rule also makes conforming changes to correlate the Commerce Control List (CCL) (Supplement No. 1 to Part 774 of the EAR) with the current MTCR Annex. This final rule revises six Export Control Classification Numbers (ECCNs) to implement the changes that were agreed to at the meetings and to better align the MT controls on the CCL with the MTCR Annex.

**DATES:** This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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## **SUPPLEMENTARY INFORMATION:**

### **Background**

The MTCR is an export control arrangement among 34 nations, including most of the world's suppliers of advanced missiles and missile-related equipment, materials, software and technology. The regime establishes a common list of controlled items (the Annex) and a common export control policy (the Guidelines) that member countries implement in accordance

with their national export controls. The MTCR seeks to limit the risk of proliferation of weapons of mass destruction by controlling exports of goods and technologies that could make a contribution to delivery systems (other than manned aircraft) for such weapons.

In 1992, the MTCR's original focus on missiles for nuclear weapons delivery was expanded to include the proliferation of missiles for the delivery of all types of weapons of mass destruction (WMD), i.e., nuclear, chemical and biological weapons. Such proliferation has been identified as a threat to international peace and security. One way to counter this threat is to maintain vigilance over the transfer of missile equipment, material, and related technologies usable for systems capable of delivering WMD. MTCR members voluntarily pledge to adopt the regime's export Guidelines and to restrict the export of items contained in the regime's Annex. The regime's Guidelines are implemented through the national export control laws, regulations and policies of the regime members.

### **Amendments to the Export Administration Regulations**

This final rule revises the EAR to reflect changes to the MTCR Annex agreed to at the September and October 2014 Plenary in Oslo, Norway and pursuant to the 2014 Technical Experts Meeting in Prague, Czech Republic. Corresponding MTCR Annex references are provided below for the MTCR Annex changes agreed to at the meetings. This rule also makes three conforming changes to correlate the Commerce Control List (CCL) (Supplement No. 1 to Part 774 of the EAR) with the current MTCR Annex. These conforming changes are made to better align the MT controls on the CCL with the MTCR Annex. In the explanation below for the revisions made in this rule, BIS identifies these changes as follows: "Oslo 2014 Plenary,"

“Prague 2014 TEM,” and “CCL Conforming Change to MTCR Annex” to assist the public in understanding the origin of each change included in this final rule.

Specifically, the following six ECCNs are affected by the changes set forth in this final rule:

ECCN 1C111. This final rule amends ECCN 1C111 by revising paragraph a.1 in the List of Items Controlled section to correct an omission error in the ISO standard referenced in order to reference the proper standard. Specifically, this final rule adds a dash and the number one “-1” after the number 2591, so the ISO standard correctly reads “ISO 2591-1:1988.” (MTCR Annex Change, Category II: Item 4.C.2.c., Prague 2014 TEM). This change is not expected to have any impact on the number of license applications received by BIS.

ECCN 1C111. This final rule also amends ECCN 1C111 by revising the Technical Note to paragraph b.5 and paragraphs d.7, d.14 and d.18 in the List of Items Controlled section to add CAS (Chemical Abstracts Service) Numbers. CAS Numbers are a numerical identifier assigned by the Chemical Abstracts Service (CAS) to every chemical substance described in the open scientific literature, including organic and inorganic compounds, minerals, isotopes and alloys. The inclusion of CAS Numbers will make it easier to identify the materials controlled under these “items” paragraphs of 1C111. Specifically, this final rule revises the Technical Note to paragraph b.5 to add the CAS Number “(CAS 110-63-4)” after the material “poly 1,4-Butanediol” and the CAS Number “(CAS 25322-68-3)” after the material “polyethylene glycol (PEG).” (MTCR Annex Change, Category II: Item 4.C.5.g., Oslo 2014 Plenary). This final rule revises paragraph d.7 to add the CAS Number “(CAS 5164-11-4)” after “N,N diallylhydrazine.”

(MTCR Annex Change, Category II: Item 4.C.2.b.6., Oslo 2014 Plenary). This final rule revises paragraph d.14 to add the CAS Number “(CAS 13464-98-7)” after the material “Hydrazinium dinitrate.” (MTCR Annex Change, Category II: Item 4.C.2.b.13., Oslo 2014 Plenary). Lastly, this final rule revises paragraph d.18 to add the CAS Number “(CAS 29674-96-2)” after the material “Methylhydrazine nitrate (MHN).” (MTCR Annex Change, Category II: Item 4.C.2.b.18., Oslo 2014 Plenary). These changes are not expected to have any impact on the number of license applications received by BIS.

ECCN 3A101. This final rule revises paragraph a.2.a to remove paragraph a.2.a.1 and revises paragraph a.2.b to remove paragraph a.2.b.1 in the List of Items Controlled section because the quantization requirement was removed in the MTCR Annex. This final rule also redesignates paragraph a.2.a.2 as new paragraph a.2.a.1, and paragraph a.2.a.3 as new paragraph a.2.a.2 as a conforming change to the removal of items paragraph a.2.a.1. This final rule also redesignates paragraph a.2.b.2 as new paragraph a.2.b.1 and paragraph a.2.b.3 as new paragraph a.2.b.2 as a conforming change to the removal of paragraph a.2.b.1. (MTCR Annex Change, Category II: Item 14.A.1., Prague 2014 TEM). Paragraphs a.2.a and a.2.b are being revised to correspond with advances in technology. MTCR partners agreed it was no longer necessary to specify that the analogue-to-digital converters have an 8 bit quantization, as most microcircuits will have this capability. Those at 8 bits or above will remain controlled by ECCN 3A001.a.5.a., while the revised 3A101.a will cover those less than 8-bits. Although this change expands the scope of the 3A101, this change is not expected to have any impact on the number of license applications received by BIS because very few microcircuits are currently classified under this ECCN.

ECCN 9A106. This final rule revises paragraph d and the Note to paragraph d in the List of Items Controlled section. (MTCR Annex Change, Category II: Item 3.A.5., Oslo 2014 Plenary). This final rule revises “items” paragraph d by removing the term “and” and then adding the phrase “and gel” before the term “propellant.” Paragraph d, as a result of this change, will now control liquid, slurry and gel propellant control systems. These changes to paragraph d are being made to better control the components of propellant control systems, as well as to clarify how the parameters are applied in the context of 9A106. The term “gel” needs to be added to the control parameter of 9A106.d because gel is not technically a slurry. Therefore, in order to ensure that all of the intended propellant control systems are adequately described under this paragraph d, the term “gel” needs to be added.

Also in ECCN 9A106, this final rule revises the Note to paragraph d to delete the term “and” in the introductory text and to add the phrase “and gas turbines” after the term “pumps” to clarify only servo valves, pumps and gas turbines that are specified under paragraphs a, b or c are classified under 9A106.d. In addition, this final rule clarifies the scope of the Note to paragraph d by adding the phrase “at the maximum operating mode” after the control parameter 8,000 rpm to add greater specificity for how to apply this control parameter. Lastly, this final rule adds a new paragraph c to the Note to paragraph d to specify that gas turbines, for liquid propellant turbopumps, with shaft speeds equal to or greater than 8,000 rpm at the maximum operating mode are also controlled under 9A106.d. The changes will result in an expansion of the control parameter, so this change is expected to result in an increase of 1-2 applications received annually by BIS.

ECCN 9A110. This final rule revises the heading of ECCN 9A110. (Category II: Item 6.A.1., CCL Conforming Change to MTCR Annex). Prior to publication of this final rule, the

heading of 9A110 included references to several ECCNs that are “subject to the ITAR” that themselves refer to the USML. The heading structure of 9A110 was slightly convoluted and difficult to understand. Therefore, this final rule revises the heading of 9A110 to make the control parameter simpler and clearer. The revisions do not change the scope of control of 9A110. These revisions to the heading of 9A110, and the additions of 9A604.f and 9A610.t described below, will better reflect the control text of the MTCR Annex with the added benefits of being simpler and easier to understand, in particular for where composite materials for commercial UAVs (under 9A110) are classified on the CCL and where composite materials for military UAVs (under 9A604.f and 9A610.t) are classified on the CCL. This change to 9A110 is not expected to have any impact on the number of license applications received by BIS.

ECCN 9A604. This final rule adds a new paragraph .f in the List of Items Controlled section. (Category II: Item 6.A.1., CCL Conforming Change to MTCR Annex). Paragraph f will control composite structures, laminates and manufactures thereof “specially designed” for the items controlled under USML Category IV that are specified in paragraphs f.1 – f.7. Such commodities previously were classified under ECCN 9A604.x. This final rule adds a new paragraph f to allow a clearer identification of these commodities and for the designation of MT license requirements. This final rule also revises the “MT” control in the Reason for Control paragraph in the License Requirements section to add 9A604.f to the MT control. This addition of 9A604.f is made for consistency with the MTCR Annex. Those composite structures, laminates and manufactures thereof “specially designed” for items controlled under USML IV but that do not meet the MTCR thresholds remain controlled under 9A604.x. This change is not expected to have any impact on the number of license applications received by BIS.

ECCN 9A610. This final rule adds a new paragraph t in the List of Items Controlled section. (Category II: Item 6.A.1., CCL Conforming Change to MTCR Annex). Paragraph t will control composite structures, laminates and manufacturers thereof “specially designed” for unmanned aerial vehicles controlled under USML Category VIII(a) with a range equal to or greater than 300 km. Such commodities previously were classified under ECCNs 9A610.x. This final rule adds new paragraph t to allow a clearer identification of these commodities and also for consistency with the MTCR Annex. This final rule also makes two conforming changes in the Reason for Control paragraph in the License Requirements section. First, this final rule revises the “NS” control in the Reason for Control paragraph in the License Requirements section to add the new 9A610.t to the list of 9A610 commodities that are not subject to the “NS” control. Second, this final rule revises the “MT” control in the Reason for Control paragraph in the License Requirements section to add 9A610.t to the MT control. Lastly, this final rule revises the Related Control in the List of Items Controlled section to remove Related Controls paragraph (2) because it is no longer needed due to the revisions made to 9A110, 9A604 and 9A610. BIS evaluated whether adding a Related Controls reference in 9A110 to 9A604.f and 9A610.t would be helpful, but decided it was not needed because the CCL Order of Review in Supplement No. 4 to part 774 already directs persons to review the 9x515 and “600 series” ECCNs prior to reviewing other ECCNs on the CCL. This change is not expected to have any impact on the number of license applications received by BIS.

### **Savings Clause**

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were on dock for



loading, on lighter, laden aboard an exporting or reexporting carrier, or enroute aboard a carrier to a port of export or reexport, on [INSERT DATE OF PUBLICATION], pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR) so long as they are exported or reexported before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION]. Any such items not actually exported or reexported before midnight, on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION], require a license in accordance with this rule.

### **Export Administration Act**

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 7, 2014, 79 FR 46959 (August 11, 2014), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

### **Regulatory Requirements**

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the

importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person may be required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and carries a burden estimate of 43.8 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are expected to increase slightly as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by e-mail to [Jasmeet\\_K.\\_Seehra@omb.eop.gov](mailto:Jasmeet_K._Seehra@omb.eop.gov), or by fax to (202) 395-7285.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United

States (5 U.S.C. 553(a)(1)). Immediate implementation of these amendments fulfills the United States' international commitments to the MTCR. The MTCR contributes to international peace and security by promoting greater responsibility in transfers of missile technology items that could make a contribution to delivery systems (other than manned aircraft) for weapons of mass destruction. The MTCR consists of 34 member countries that act on a consensus basis and the changes set forth in this rule implement agreements reached by MTCR member countries at the September and October 2014 Plenary in Oslo, Norway and at the 2014 Technical Experts Meeting in Prague, Czech Republic. Since the United States is a significant exporter of the items in this rule, implementation of this provision is necessary for the MTCR to achieve its purpose. Moreover, it is in the public interest to waive the notice and comment requirements, as any delay in implementing this rule will disrupt the movement of affected items globally because of disharmony between export control measures implemented by MTCR members. Export controls work best when all countries implement the same export controls in a timely manner. If this rulemaking were delayed to allow for notice and comment and a 30 day delay in effectiveness, it would prevent the United States from fulfilling its commitment to the MTCR in a timely manner, would injure the credibility of the United States in this and other multilateral regimes, and may impair the international communities' ability to effectively control the export of certain potentially national- and international-security-threatening materials.

Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory

Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form.

#### **List of Subjects in 15 CFR Part 774**

Exports, Reporting and recordkeeping requirements.

Accordingly, part 774 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

#### **PART 774—[AMENDED]**

1. The authority citation for 15 CFR part 774 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

2. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1 – Special Materials and Related Equipment, Chemicals, “Microorganisms” and “Toxins,” Export Control Classification Number (ECCN) 1C111 is amended:

a. By revising the introductory text of “items” paragraph a.1 in the List of Items Controlled section;

b. By revising the Technical Note to “items” paragraph b.5 in the List of Items Controlled section; and

c. By revising “items” paragraphs d.7, d.14, and d.18 in the List of Items Controlled section to read as follows:

#### **Supplement No. 1 to Part 774—The Commerce Control List**

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**1C111 Propellants and constituent chemicals for propellants, other than those specified in 1C011, as follows (see List of Items Controlled).**

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#### **List of Items Controlled**

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##### *Items:*

a. \*\*\*

a.1. Spherical or spheroidal aluminum powder (C.A.S. 7429-90-5) in particle size of less than  $200 \times 10^{-6}$  m (200  $\mu$ m) and an aluminum content of 97% by weight or more, if at least 10 percent of the total weight is made up of particles of less than 63  $\mu$ m, according to ISO 2591-1:1988 or national equivalents.

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b. \*\*\*

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b.5. \*\*\*

***Technical Note:*** *Polytetrahydrofuran polyethylene glycol (TPEG) is a block copolymer of poly 1,4-Butanediol (CAS 110-63-4) and polyethylene glycol (PEG) (CAS 25322-68-3).*

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d. \*\*\*

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d.7. N,N diallylhydrazine (CAS 5164-11-4);

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d.14. Hydrazinium dinitrate (CAS 13464-98-7);

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d.18. Methylhydrazine nitrate (MHN) (CAS 29674-96-2);

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3. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3 – Electronics, Export Control Classification Number (ECCN) 3A101 is amended by revising “items” paragraphs a.2.a and a.2.b in the List of Items Controlled section to read as follows:

**3A101 Electronic equipment, devices, “parts” and “components,” other than those controlled by 3A001, as follows (see List of Items Controlled).**

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**List of Items Controlled**

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*Items:*

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a. \*\*\*

a.2.a. Analog-to-digital converter microcircuits which are radiation-hardened or have all of the following characteristics:

a.2.a.1. Rated for operation in the temperature range from below -54°C to above +125°C;

*and*

a.2.a.2. Hermetically sealed; *or*

a.2.b. Electrical input type analog-to-digital converter printed circuit boards or modules, having all of the following characteristics:

a.2.b.1. Rated for operation in the temperature range from below -45°C to above +80°C; *and*

a.2.b.2. Incorporating microcircuits identified in 3A101.a.2 .a;

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4. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A106 is amended by revising “items” paragraph d, including the Note to paragraph d, in the List of Items Controlled section to read as follows:

**9A106 Systems, “parts” or “components,” other than those controlled by 9A006, usable in “missiles”, and “specially designed” for liquid rocket propulsion systems, as follows (see List of Items Controlled).**

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#### **List of Items Controlled**

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##### *Items:*

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d. Liquid, slurry and gel propellant (including oxidizers) control systems, and “specially designed” “parts” and “components” therefor, designed or modified to operate in vibration environments greater than 10 g rms between 20 Hz and 2000 Hz.

***Note:** The only servo valves, pumps and gas turbines controlled by 9A106.d, are the following:*

*a. Servo valves designed for flow rates equal to or greater than 24 liters per minute, at an absolute pressure equal to or greater than 7 MPa, that have an actuator response time of less than 100 ms;*



*b. Pumps, for liquid propellants, with shaft speeds equal to or greater than 8,000 rpm at the maximum operating mode or with discharge pressures equal to or greater than 7 Mpa; or*

*c. Gas turbines, for liquid propellant turbopumps, with shaft speeds equal to or greater than 8,000 rpm at the maximum operating mode.*

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5. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A110 is amended:

a. By revising the heading; and

b. By revising the Related Controls paragraph in the List of Items Controlled section to read as follows:

**9A110 Composite structures, laminates and manufactures thereof “specially designed” for 9A012 items that are controlled for MT reasons.**

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#### **List of Items Controlled**

*Related Controls:* See also 1A002.

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6. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A604 is amended:

a. By revising the third entry in the License Requirements table; and

b. By adding items paragraph f. to the List of Items Controlled section to read as follows:

**9A604 Commodities related to launch vehicles, missiles, and rockets (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* \*\*\*

Control(s)	Country Chart (See Supp. No. 1 to part 738)
*****	
MT applies to 9A604.a, .c, .d, and .f	MT Column 1
*****	

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**List of Items Controlled**

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*Items:*

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f. Composite structures, laminates and manufactures thereof “specially designed” for the following items controlled under USML Category IV:

f.1. Systems capable of a range equal to or greater than 300 km;

f.2. Individual rocket stages usable in 9A604.f.1. systems;

f.3. Solid propellant rocket motors or hybrid rocket motors having a total impulse capacity equal to or greater than  $8.41 \times 10^5$  Ns; or

f.4. Liquid propellant rocket engines integrated, or designed or modified to be integrated, into a liquid propellant propulsion system which has a total impulse capacity equal to or greater than  $8.41 \times 10^5$  Ns.

f.5. Thrust vector control systems usable in rockets, space launch vehicles (SLVs), and missiles capable of delivering at least a 500 kg payload to a range of at least 300 km.

f.6. Re-entry vehicles or warhead heat shields usable in rockets, SLVs, and missiles capable of delivering at least a 500 kg payload to a range of at least 300 km.

f.7. Safing, arming, fuzing, and firing components usable in rockets, SLVs, and missiles capable of delivering at least a 500 kg payload to a range of at least 300 km.

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7. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A610 is amended:

a. By revising the first and third entries in the License Requirements table; and

b. By adding “items” paragraph t to the List of Items Controlled section to read as follows:

**9A610 Military aircraft and related commodities, other than those enumerated in 9A991.a (see List of Items Controlled).**

## License Requirements

*Reason for Control:* \*\*\*

Control(s)	Country Chart (See Supp. No. 1 to part 738)
NS applies to entire entry except 9A610.t, .u, .v, .w, and .y	NS Column 1
*****	
MT applies to 9A610.t, .u, .v, and .w	MT Column 1
*****	

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## List of Items Controlled

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*Items:*

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t. Composite structures, laminates and manufactures thereof “specially designed” for unmanned aerial vehicles controlled under USML Category VIII(a) with a range equal to or greater than 300 km.

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Dated: April 1, 2015.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

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